

Restocking charges are generally not considered to be taxable gross receipts for purposes of Retailers' Occupation Tax. See 35 ILCS 120/1. (This is a GIL).

July 26, 2001

Dear Xxxxx:

This letter is in response to your letter dated April 23, 2001 that we received in our office on May 15, 2001. In accordance with our recent telephone conversation, we are responding with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be accessed at the Department's Website at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

AAA are major wholesalers and distributors of medical and surgical supplies, primarily to hospitals and major medical centers. AAA is currently considering implementing various fees for services rendered to our customers. When billing each of these fees the amount will always be separately stated. Pursuant to Illinois Regulation III. Adm. Code 1200.110, we are requesting an opinion from the Department of Revenue as to the taxability of the following fees:

Consulting Services -- AAA provides these services to hospitals and medical centers to evaluate and provide an analysis on how to set up their supply house, storeroom, and/or warehouse for the maximum efficiency.

Employee Outsourcing -- These charges are for providing short-term or long-term temporary employee services, in which the AAA employee is supervised by the customer. The services provided include but are not limited to administration, warehouseman, stock clerk, etc.

Parking -- AAA leases/rents a portion of their parking lot to a neighboring company.

Telephone Coverage -- This charge is for the cost of having a person on call 24 hours a day for emergency orders.

Restocking Fees -- These charges are to cover the time and expense in returning goods to AAA's resale inventory when the buyer has not used the goods in a way that decreases their value.

Reserve Inventory Fee - These are charges AAA bills a customer to maintain a set quantity of items in our inventory, pending the customer's purchases. This is to assure that critical items will be in stock and immediately available for shipping to that customer. The title to this inventory remains in the custody of AAA until it is purchased by the customer.

Sales Tracing Fees -- These charges are for compiling data on a customer's purchases from AAA's information system and generating various reports. These reports are requested by the customer in order to analyze their spending patterns, and identify items that are not purchased under contract so that they may reduce excess spending. This information is transmitted either electronically or via paper.

If you have any questions concerning these items, or need additional information, please contact me.

In general, the sale of tangible personal property at retail in Illinois subjects the retailer to Retailers' Occupation Tax liability based upon the gross receipts received by the retailer. However, the provision of services in Illinois that is not accompanied by the transfer of tangible personal property is not subject to Retailers' Occupation Tax.

When the provision of any of the services described in your letter are accompanied by the transfer of tangible personal property, such sales of service would be subject to liability under the Service Occupation Tax Act. The appropriate method for calculating tax liabilities can be determined based upon the following information.

Under the Service Occupation Tax Act, servicemen are taxed on tangible personal property transferred as an incident of their sales of service. Servicemen incur either Service Occupation Tax (SOT) liability or Use Tax liability in these transactions. The tax consequences depend upon the method used to calculate the liability. Servicemen may calculate their tax base in one of four ways: 1. separately stated selling price; 2. 50% of serviceman's entire bill; 3. SOT on his cost price if he is a registered de minimis serviceman; or, 4. Use Tax on his cost price if he is a de minimis serviceman not required to be registered under Section 2a of the Retailers' Occupation Tax Act. Please see the enclosed copy of 86 Ill. Adm. Code 140.101, the Basis and Rate of the Service Occupation Tax.

Using the first method, servicemen may separately state the selling price of each item transferred as a result of the sale of service. The tax is then calculated on the separately stated selling price of the tangible personal property transferred. If the servicemen do not separately state the selling price of the tangible personal property transferred, they must use 50% of the entire bill to the service customer as the tax base. Both of the above methods provide that in no event may the tax base be less than the servicemen's cost price of the tangible personal property transferred. Please refer to 86 Ill. Adm. Code 140.106, enclosed.

The third way servicemen may account for their tax liability only applies to de minimis servicemen who have either chosen to be registered or are required to be registered because they incur Retailers' Occupation Tax liability with respect to a portion of their business. See 86 Ill. Adm. Code 140.109, enclosed. Servicemen may qualify as de minimis if they determine that the annual aggregate cost price of tangible personal property transferred as an incident of the sale of service is less than 35% of the total annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphics arts production). Registered de minimis servicemen are authorized to pay Service Occupation Tax (which includes local taxes) based upon their cost price of tangible personal property transferred incident to the sale of service. Such servicemen should give suppliers resale certificates and remit Service Occupation Tax using the Service Occupation Tax rates for their locations. Such servicemen collect a corresponding amount of Service Use Tax from their customers.

The final method of determining tax liability may be used by de minimis servicemen that are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act. Such de minimis servicemen handle their tax liability by paying Use Tax to their suppliers. If their suppliers are not registered to collect and remit tax, the servicemen must register, self-assess and remit Use Tax to the Department. The servicemen are considered to be the end-users of the tangible personal property transferred incident to service. Consequently, they are not authorized to collect a "tax" from the service customers. See 86 Ill. Adm. Code 140.108, enclosed.

When retailers charge customers for restocking returned merchandise, the receipts retained by the retailer to cover the restocking charge are not considered taxable gross receipts for purposes of Retailers' Occupation Tax. We do not have sufficient information about the reserve inventory fee to determine if it is subject to Retailers' Occupation Tax. If this fee is part of the selling price of tangible personal property, then it would be taxable.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Karl W. Betz
Associate Counsel

KWB:msk
Enc.